86-710

NO. _____

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

EDWIN SLADE,

vs.

THE UNITED STATES OF MEXICO,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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52 pp

QUESTION PRESENTED FOR REVIEW

1. Is Mexico wholly immune from suit, on petitioner's claim?

PARTIES TO PROCEEDINGS

No other petitioner is party to this proceeding.

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No._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

EDWIN SLADE,

PETITIONER,

v.

UNITED STATES OF MEXICO,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

The petitioner, Edwin Slade, unschooled in law, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia filed on May 27, 1986.

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OPINION BELOW

The U.S. Court of Appeals filed its judgment on May 27, 1986, (Appendix A) affirming the Memorandum Opinion of the U.S. District Court for the District of Columbia (CVA 84-1343) dated July 8, 1985 (Appendix B). A motion for reconsideration was denied on July 24, 1986 (Appendix C).

JURISDICTION

Jurisdiction of this court is sought by petitioner after rendition of judgment in a civil case by the Court of Appeals for the District of Columbia.

The date of the judgement sought to be reviewed is May 27, 1986 known as case No. 85-5986.

The date of the order denying a motion for reconsideration is July 24, 1986.

Jurisdiction of this court is codified under Title 28, United States Code, Section 1254(1).

CONSTITUTIONAL PROVISIONS

Article III, Section 2 of the U.S. Constitution provides that:

> The judicial power shall extend to all cases...between a state, or the citizens thereof, and foreign states...

STATEMENT OF THE CASE

This is a cause of action for money owed to an American citizen by a foreign sovereign. Petitioner holds bearer receipts for this debt, denominated in U.S. dollars and issued and payable in New York by Mexican Presidential decree and ratified by the Congress of the United States of Mexico in 1922. The debt was due and payable in 1968, and was guaranteed by the railroad revenue, the oil export revenue, and the full faith and credit of Mexico. The debt went into default in 1924. However, the New York Supreme Court ruled that this default did not relieve Mexico of its contractual obligation to make final repayment in 1968 Lamont vs. Travelers Ins. Co. Petitioner seeks prospective application of the Foreign Sovereign Immunities Act to cure this debt with monies earned by

Mexico in the United States of America after 1976, and pledged by Mexico to service this debt.

The basis for federal jurisdiction in the court of first instance was 28 U.S.C. Sec. 1331,1332,1361,1651.

REASONS FOR ALLOWING WRIT

The U.S. Court of Appeals for the District of Columbia Circuit has decided an important federal question on foreign sovereign immunity which is directly in conflict with applicable decisions of this court.

The courts below have confused the right of sovereignty of a foreign sovereign in his own domain, with the status of a foreign sovereign within the United States, as in this case.

It is an indisputable fact the U.S.

Constitution grants this court jurisdiction over a sovereign, and this fact has never been changed by law. In 1792 the U.S. Supreme Court, in the case of Chisholm v. Georgia, 2 U.S. (2 Dallas) 419, the Attorney-General of the United States Randolph affirmed, on p. 421,

> What if a state should impair her own contracts? These evils, and others like them, cannot be corrected without a suit against the state.

Justice Blair writes, on p. 451,

> To the constitution of the United States, the term sovereign is totally unknown.

Justice Wilson, states on p. 456,

> A state, like a merchant, makes a contract. A dishonest state, like a dishonest merchant, wilfully refuses to discharge it: the latter is amenable to a court of justice; upon general principles of right, shall the former when summoned to answer to the fair demands of its creditors, be permitted, Proteus-like, to assume a new appearance, and to insult him and justice, by declaring I am a sovereign state? Surely not.

Justice Cushing noted on p. 468:

> The rights of individuals and the justice due them are as dear and precious as those of states. Indeed, the latter are founded on the former: and the great end object of them must be to secure and support the rights of individuals, or else, vain is government.

Chief Justice Jay, on p. 473 summarizes with these words:

> It is plain, then that a state may be sued, and hence it plainly follows, that suability and state sovereignty are not incompatible.

Thus, at the foundations of our nation's history, the right of petitioner to sue a sovereign entity was firmly held by the Supreme Court, and never changed.

Denial of petitioner's right to sue a sovereign is unconstitutional as it applies to petitioner.

Since all federal judges have sworn to uphold the Constitution of the United States, it is reversible error to hold that the "Doctrine of Sovereign Immunity" supersedes the Constitution of the United

States.

Further, it is improper that a letter from a federal employee to his superior in the executive branch (the Tate Letter) could in any way vitiate the rights guaranteed to American citizens by the Constitution. This was anticipated by the founding fathers when they espoused the principle of separation of powers. The executive branch cannot unilaterally change the plain meaning of the Constitution; that task is vested in the legislative branch of the government. Any opinion to the contrary is reversible error. The appellate court below relied on these faulty premises which are in direct opposition to previous opinions rendered by this court.

CONCLUSION

For all the foregoing reasons, petitioner

Edwin Slade respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia in the above captioned case.

EDWIN SLADE, PRO SE

APPENDIX A

NOT TO BE PUBLISHED SEE LOCAL RULE 8

UNITED STATES COURT OF APPEALS

No. 85-5986 September Term, 1985
Edwin Slade,
Appellant,
v.
United States of Mexico
Civil Action No. 84-01343
FILED May 27 1986
George A. Fisher Clerk

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA Before: ROBINSON, Chief Judge, GINSBURG, Circuit Judge and Re*, Chief Judge of the United States Court of International Trade

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and was briefed by the parties. Thye court has reviewed the matter in controversy and concludes that the plaintiff-appellant's claim does not warrant a further opinion. See D.C. Cir. R. 11(d), 13(c). For the reasons cogently stated by the District Court in its July 8, 1985, Memorandum Opinion, it is

ORDERED and ADJUDGED that the judgement dismissing this case because (1) the Foreign Sovereign Immunities Act does not apply retroactively to cover the transactions at issue, and (2) Mexico is therefore wholly immune from suit on

plaintiff-appellant's claim, is affirmed.

Per Curiam
For the Court
(SIGNATURE)
George A. Fisher Clerk

APPENDIX B

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

EDWIN SLADE,
Plaintiff,
v.
THE UNITED STATES OF MEXICO,
Defendant.
Civil Action No. 84-1343
FILED JUL 8 - 1985
James F. Davey, Clerk

MEMORANDUM ORDER

Plaintiff, pro se, filed this action against the United States of Mexico to recover $472,123, the purported face value of certain "Receipts for Interest in Arrears" which he alleges were issued by the Mexican government pursuant to

certain agreements made in 1922.1/ This action was originally filed in the United States District Court for the District of Nevada.2/ On October 28, 1981, that court dismissed plaintiff's complaint for lack of personal jurisdiction over the defendant. Plaintiff appealed and the Ninth Circuit, in an unpublished opinion, affirmed the court's finding that it lacked personal jurisdiction, but it nevertheless vacated the lower court's order of dismissal with instructions to transfer the matter pursuant to

1/ Plaintiff himself purchased these receipts in 1972.

2/ Edwin Slade v. United States of Mexico, CIV-LV-80-44, HEC, filed on February 13, 1980.

28 U.S.C. Sec. 1406(a).3/ In accordance with plaintiff's request, the District Court in Nevada transferred the action to this Court on April 30, 1984. Currently pending are the parties' crossmotions for summary judgement.4/

In order to understand better the jurisdictional issues raised by Mexico, the background of the agreements under which plaintiff's receipts were issued and the amendments to those agreements will be summarized.

3/ The Ninth Circuit stated that "if such jurisdiction exists at all, it would seem to be only in New York, or less probably, in the District of Columbia pursuant to 28 U.S.C. Sec. 1391(f)(1)-(4)." Opinion at 3.

4/ The motion filed by plaintiff merely states that he is moving for summary judgment "based on the record now before the Court."

From 1886 to 1910, during the so-called "Diaz regime," Mexico was engaged in extensive construction projects. In order to finance such projects, the government of Mexico as well as certain municipalities and privately-owned railroads issued bonds and various other debt instruments totalling over $500 million. These bonds were sold world-wide by banking houses in the United States and Europe. The government of Mexico continued to make payments on these debts until 1914, when civil unrest broke out in that country.

After the Mexican government ceased making payments, a number of banking houses, many of which had sold bonds to the public, joined together and formed a committee -- i.e., the International Committee of Bankers (the Committee) --

to negotiate with the Mexican government for the resumption of payment

on the bonds.5/ After several years of negotiation, an agreement was finally reached between the Finance Minister of Mexico and the Committee.6/ This agreement, the "Plan and Agreement of June 16, 1922," was intended to restore certain specified obligations, both private and public, and to provide for the discharge of such obligations on a limited and deferred basis by the Mexican government in accordance with its ability to pay.

5/ Although the Committee was formed for the purpose of protecting the interests of the bondholders, neither the bondholders nor the government of Mexico authorized the formation of the Committee. Rather, it was a self-constituted and self-appointed entity.

6/ This agreement was subsequently ratified by the President and Congress of Mexico.

Among other things, the Plan provided that,

1. ARREARS OF INTEREST

> The payment in cash of all interest due and payable on or before January 2, 1923, on both the government and the railway obligations, is to be waived by the bondholders.
>
> The payment of interest upon all arrears of interest due and payable on or before January 2, 1923, on both the government and railway obligations is to be waived by the bondholders.

Notwithstanding these provisions, the Plan provided that the government of Mexico would set aside during a 40 year period -- i.e., from 1928 to 1968 -- sums sufficient to retire the unpaid interest. Holders of coupons for such unpaid interest were required to deposit their coupons with a trustee designated by the Committee who, in exchange for the coupons, would issue receipts for the face amount of the coupons -- the same "Receipts for Interest in Arrears" upon which plaintiff sues. In accordance with the plan, the receipts were to be issued not by the government of Mexico, but by

the Committee. The plan provided, however, that if the Plan was not, for any reason, fully carried out during the next 5 years, the bondholders would "resume all their contractual rights."

Upon adoption of this plan, the Committee drafted a second agreement -- the Deposit Agreement of July 1, 1922. This agreement set forth the

rights of the holders of coupons for interest in arrears who deposited their coupons with the Committee. By its term, the Deposit Agreement was "between such holders of the bonds . . . and of the coupons or other evidences of indebtedness for or rights to unpaid interest . . . as shall become parties to this agreement in the manner herein after provided . . . and International Committee of Bankers of Mexico . . . "

The deposit agreement also stated that, in the event that the Mexican government defaulted, the holders could recover their deposited coupons or the assignment of rights to interest represented by the receipts from Guaranty Trust Company of New York. Approximately 98 percent of all the creditors holding bonds and interest coupons covered by the Plan deposited them with the Committee.

Because of continued civil unrest and economic troubles in Mexico, the Mexican government was unable to carry out the 1922 Plan as it had agreed. The Committee and the Finance Minister for Mexico again entered into negotiations and on October 23, 1925, agreed to a supplemental or modified plan

-- the "1925 Modification."7/ One of the purposes of the 1925 Modification was to limit the Government's liability, obliging it to repay only those amounts it could realistically afford. The 1925 Modification differed from the 1922 Agreement in that it distinguished the direct debts of the central government and political subdivisions, on the one hand, from the debts of the railways on the other. With respect to interest on arrears, the 1925 Modification provided that the government would discharge the direct debt and the railways would discharge their own debt.8/

7/ This agreement, too, was ratified by the President and Congress of Mexico.

8/ The 1925 Modification did not alter the right of the receipt holders to recover the underlying coupons or other instruments in the event that the Mexican government or the railways defaulted.

Between 1923 and 1928, the Mexican government and the railways paid the Committee in excess of $45 million to purchase and redeem the outstanding debts covered by the 1922 Plan and 1925 Modification. In 1928, however, the Mexican government again ceased making payments because of the social and economic conditions in the country. Although the Committee tried to work out another agreement with the Mexican government, it was unable to do so. In 1932, the Committee abandoned negotiations with the intention of distributing the remaining funds it held.

Ten years later, the Mexican government entered into a third agreement with the Committee -- the 1942 Agreement. Under this Agreement, the holders of Receipts for Interest in Arrears could receive payments, which had ceased in 1928,

directly from the government of Mexico, but such payments would be at less than face value. Before such holders were eligible to receive any payments, however, they had to assign their proportionate interest in the remaining funds held by the Committee to the Mexican government. In 1946, the Mexican government and the Committee entered into a similar agreement with respect to the repayment of railway obligations.

An additional prerequisite to receive payments under either the 1942 or 1946 agreements, was registration of the instruments (including the Receipts for Interest in Arrears), pursuant to the August 4, 1942 decree of the Mexican government. This decree required all holders of obligations of the Mexican government and the National railways which were issued under the Deposit

Agreement of 1922 to register their securities with the Mexican government so that the government could determine whether the owners were enemy or non-enemy aliens. The right to register under this decree terminated on December 29, 1951 pursuant to the Law on the Destination of Enemy Bonds ("the Enemy Bonds Act").

All holders of Receipts for Interest in Arrears who presented their receipts for registration pursuant to the August 4, 1942 decree had their receipts retired pursuant to either the 1942 or 1946 Agreemeht with the Committee. Thus, any Receipts for Interest in Arrears presently in existence, including those held by plaintiff, were not registered as required under the 1942 decree. Moreover, pursuant to the Enemy Bonds Act, all receipts which were not so

registered passed to the ownership of the Mexican government, with no rights retained by the holders.

II

By way of further background, the Court notes that this is not the first action to be filed in the United States relating to the Receipts for Interest in Arrears or other instruments issued under the 1922 Agreements. In 1932, a number of bondholders who had deposited their receipts pursuant to the 1922 Deposit Agreement filed a series of lawsuits in New York against the Committee to obtain priority in the distribution of approximately $7 million held by the Committee -- the Committee had distributed $33 of the $45 million paid by the government of Mexico between 1923 and 1928 and retained another $5 million

for its own expenses. The Mexican government, which also sought to recover this $7 million, argued, by special appearance, that it was a necessary party to the litigation, and that the proceedings could not go forward since the New York courts lacked jurisdiction over it.

Although Mexico's argument was initially successful, the New York courts ultimately affirmed the findings of the court-appointed referee that the Committee was not an agent of Mexico, and that the government of Mexico was not a party to the Deposit Agreement of 1922 under which the receipts were issued. On that basis, the litigation was allowed to go forward without Mexico, and the Committee was ultimately ordered to make an accounting of the remaining assets it held and to distribute such assets in an

appropriate manner.

A second lawsuit was filed against the Committee in 1952, again in a New York State court, to determine the distributive rights of certain claimants to the remaining funds held by the Committee. Among the parties to this action were Guaranty Trust Company of New York and Bankers Trust Company -- the stakeholders of the past due interest coupons which were turned over to the Committee in exchange for Receipts for Interest in Arrears. As previously noted, the 1922 Agreements provided that the holders of the receipts could recover the underlying coupons if the Mexican government or the railways failed to provide funds sufficient to purchase or redeem the receipts. The court, however, found that these coupons had no substantial monetary value apart from the

offers to purchase made by the Mexican government in 1942 and 1946. Guaranty Trust Company was directed to publish notices stating that depositors could withdraw their coupons and rights to interest from the two banks within the next six months. Following this six months period, the court authorized the banks to destroy the remaining coupons and thereby discharged them from any obligations thereunder. The court also discharged the Committee and ordered that it be dissolved upon payment of its remaining funds to Guaranty Trust Company of New York.

III

Based on the foregoing facts,9/ it is clear that, as a matter of substantive contract law, plaintiff cannot recover money due on receipts for interest in

arrears issued under the 1922 Deposit Agreement. However, Mexico has not moved to dismiss or for summary judgement on this ground. Rather, it argues that this Court lacks jurisdiction over it under the doctrine of sovereign immunity.

9/ The background information recited above comes from defendant's brief and the affidavit of Miguel Valdes-Villarreal, exhibit A to defendant's motion to dismiss or for summary judgment. Plaintiff has not controverted any of these statements of fact.

The foreign Sovereign Immunities Act (FSIA) provides the sole basis for subject matter jurisdiction over suits against foreign states. 28 U.S.C. Sec. 1330, 1604. Verlinden B. V. v. Central Bank of Nigeria, 461 U.S. 480 (1983); Asociacion de Reclamantes v. United Mexican States, 735 F.2d 1517 (D.C. Cir. 1984); McKeel v. Islamic Republic of Iran, 722 F.2d 582 (9th Cir. 1983); Goar v. Compania Peruana de Vapores, 688 F.2d 417 (5th Cir. 1982); Rex v. Cia. Compania Peruana de Vapores, 660 F.2d 875, 880-81 (4th Cir. 1981); Ruggiero v. Compania Peruana de Vapores, 639 F.2d 872, 875-76 (2d Cir. 1981). The FSIA, which was enacted in 1976, codified the so-called "restrictive" principle of

foreign sovereign immunity.10/ Under this theory, a foreign state is immune from suits for its sovereign or public acts (actiones jure imperii), but it is not immune for its private or commercial acts (actiones jure gestionis).

The FSIA sets forth the general rule that "a foreign state shall be immune from the jurisdiction of the courts of

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10/ The executive branch formally adopted the principle of restrictive sovereign immunity in 1952. 26 Dept. of State Bull. 984-5 (1952) (the "Tate Letter"), reprinted in Alfred Dunhill of London Inc. v. Republic of Cuba, 425 U.S. 682, 711-15 (1976). In the so-called "Tate Letter," the State Department publicly took the position that henceforth it would recommend to the United States Courts that as a matter of policy, a foreign state should be granted immunity only for its sovereign or public acts and not for its private acts.

the United States," 28 U.S.C. Sec. 1604; and then lists several specific exceptions to that rule. The exception upon which plaintiff relies is that for commercial activity, 11/ the largest and most important exception to immunity. Asociacion de Reclamantes, supra, 735 F.2d at 1520. The Act defines the term "commercial activity to mean "either a

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11/ 28 U.S.C. Sec. 1605(a)(2) provides that:

> A foreign state shall not be immune from the jurisdiction of courts of the United States or the States in any case -
>
> in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States.

regular course of commercial conduct or a particular commercial transaction or act," 28 U.S.C. Sec. 1603(d).

The Act further provides that "(t)he commercial character of an activity. . . be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose."

Mexico concedes that, based on the legislative history of the FSIA, Congress intended to include government borrowing or the issuance of public debt within the commercial activity exception to

sovereign immunity.12/ Nevertheless,

12/ See H. R. Rep. No. 1487, 94th Cong., 2d Sess., at 10, 16, reprinted in 1976 U.S. Code Cong. Admin. News, 6604. See also Delaume, Public Debt and Sovereign Immunity: The Sovereign Immunities Act of 1976, 71 Am. J. Int'l L. 399, 405 (July 1977); Von Mehren, The Foreign Sovereign Immunities Act of 1976, 17 Colum. J. Trans. L. 33, 49 n.69 (1978).

The FSIA, as first proposed, contained a section (proposed section 1606) which provided that all debts of sovereigns would remain beyond the jurisdiction of the United States courts. See H. R. 11315, 93d Cong., 1st Sess. (1973); H. R. 11315, 94th Cong., 1st Sess. (1975); Hearings on H. R. 3493 before the Subcommittee on Claims and Government Relations of the House Committee on the Judiciary, 93d Cong., 1st Sess. (1973). The Committee ultimately deleted this section as unnecessary because it found that United States lenders "invariably include an express waiver of immunity in the debt instrument." H. Rep. No. 94-1487, supra, at 10; S. Rep. No. 1310, 94th Cong., 2d Sess. 7 (1976); U.S. Code Cong. Admin. News 6609 (1976).

The United States District Court in Asociacion de Reclamantes, supra, however, made the following observations:

Proposed section 1606 was ambiguous in that it applied to all debts, not just

Mexico argues that the FSIA does not confer subject matter jurisdiction

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general governmental obligations. The State Depatrtment considered amending it but then decided that no provision was better than a more precise provision which identified only non-commercial debts for general government obligations as eligible for per se sovereign immunity . . . .

The 1976 House Report specifically discusses the deletion of proposed section 1606 to which the above quoted passage referred. The Committee appears to have ignored the fact that a public debt could exist in other than the commercial lending context. It merely suggests that only public debts "which are of a commercial nature and should be treated like other commercial transactions" are excepted from sovereign immunity . . . The non-commercial debt obligation is thus arguably immune by inplication and may place the "internal obligations" in dispute in this case outside the scope of Section 1606 exceptions.

This in accordance with the historical meaning of a "public debt" which was considered a per se public act and a sufficient basis for sovereign immunity.

561 F. Supp. 1190, 1195-96 n.10 (citations omitted).

over this case because (1) Congress did not intend the Act to be applied retroactively and (2) even if the FSIA were applicable, the receipts are not analogous to public debt and the activities of the Mexican government with respect to the 1922 agreement, under which the receipts were issued, do not constitute "commercial activity" within the meaning of section 1605(a)(2). For the reasons stated below, the Court finds that the FSIA cannot be applied retroactively to this case where all the operative events occurred before 1952. Accordingly, plaintiff's action will be dismissed for want of subject matter

jurisdiction.13/

The question of the retroactive application of the FSIA to pre-1952 transactions was recently decided by the United States District Court for the Northern District of Alabama in Jackson v. People's Republic of China, 596 F. Supp. 386 (N.D. Ala. 1984), 14/ a case similar in several respects to the case at bar. In Jackson, a group of United States holders of Hukang Railroad bonds issued in 1911 by

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13/ Because the court finds that the question of the FSIA'S retroactivity is dispositive, it need not address the other issues raised by Mexico.

14/ In Jackson, the United States intervened on behalf of China by filing a "Statement of Interest" in which it argued against retroactive application of the FSIA to the conduct of foreign states predating 1952.

The Imperial Chinese government sued the People's Republic of China to recover the unpaid principal and interest on these bonds. The court after setting aside the default judgment it had previously entered against China, dismissed the action for want of subject matter jurisdiction based on its conclusion that

> neither the language of the FSIA nor its legislative history evince that it be retroactively applied; and to apply the FSIA in this action would clearly alter the antecedent rights of China.

596 F. Supp. at 389. The Court finds the reasoning of the Jackson court persuasive and concurs in its holding.

It is axiomatic that retroactive application of statutes is disfavored. Greene v. United States, 376 U.S. 149, 160 (1964); In re District of Columbia Workmen's Compensation Act, 554 F.2d 1075, 1079 (D.C. Cir. 1976). The

Supreme Court in Union Pac. R. Co. v. Laramie Stock Yards Co., 231 U.S. 190 (1913), explained this basic canon of statutory construction as follows:

> The first rule of construction is that legislation must be considered as addressed to the future, and not to the past. The rule is one of obvious justice and prevents the assigning of a quality or effect to acts or conduct which they did not have or did not contemplate when they were performed. The rule has been expressed in varying degrees of strength, but always of one import, that a retrospective operation will not be given to a statute which interferes with antecedent rights . . . unless such be "the unequivocal and inflexible import of the terms, and the manifest intention of the legislation." (quoting United States v. Heth, 3 Cranch 399, 413.

231 U.S. at 199.

From 1922 when the Receipts of Interest of Arrears were issued until 1951 when the deadline for registration under the Enemy Bonds Act

occurred, 15/ the United States recognized and adhered to the theory of absolute sovereign immunity. Thus, an action, such as this, against a foreign state for the collection of a public debt did not exist during the times relevant to this controversy. In 1952, The Executive Branch formally adopted the restrictive theory of immunity, but it was applied only gradually by the courts in the following

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15/ Although the original plan and Agreement of 1922 provided for payments by Mexico until 1968, all the operative events precluding such payments occurred before 1952: the original bonds were issued in the late 1800's and early 1900's, the interest payments were suspended in 1914, the settlements of receipts through a series of agreements took place in the 1920's and 1940's, and the Enemy Bonds Act's final registration deadline was in 1951.

years.16/ Thus, in order to appply the restrictive theory of sovereign immunity as codified in the FSIA to this case, the court would have to find that retroactivity was the "unequivocal and inflexible import of the terms, and the manifest intention of the legislation."

16/ Mexico contends that after the United States endorsed the restrictive theory of sovereign immunity, certain fiscal matters, including the issuance of public debt, continued to be considered governmental in nature and therefore immune. See National City Bank v. Comisara General de Abastecimuntos y Transportes, 336 F.2d 354 (2d Cir. 1964). Thus, according to Mexico, it was not until 1976 when the FSIA was enacted that the transaction at issue could be regarded as private commercial activity.

Union Pac. R. Co. v. Laramie Stock Yards Co., supra, 231 U.S. at 199. This, the Court cannot do.

The statutory language and legislative history of the FSIA provide no support for the retroactive application of the Act to transactions occurring before 1952. To the contrary, the language of the Act is prospective, providing that "claims of foreign states to immunity should henceforth be decided by courts of the United States in conformity with the principles set forth in this chapter." 28 U.S.C. Sec. 1602 (emphasis added). The prospective nature of the Act is underscored by the fact that Congress delayed the effective date of the FSIA for a 90 day period so as to give foreign states advance notice of the Act's provisions and the United States' new policy. 28 U.S.C. Sec. 1602 note.

Moreover, there is nothing in the legislative history to indicate that Congress intended the FSIA to be applied retroactively to transactions predating 1952. The committee reports reveal that the Tate letter played a pivotal role in shaping United States policy concerning the immunity of foreign sovereigns after 1952 and that the FSIA was merely designed to codify the restrictive principle of sovereign immunity embodied in that letter -- "the bill is not intended to affect the substantive law of liability." S. Rep. No. 94-1310, 94th Cong., 2d Sess. 11 (1976); H. R. Rep. No. 94-1487, 94th Cong., 2d Sess. 12 (1976). Retroactive application of the Act would repudiate the immunity of foreign sovereigns for transactions predating 1952 and thus be inconsistent with Congress' intent not to affect the

substantive law ofliability.17/

17/ Other courts which have addressed the issue of retroactivity have reached a similar conclusion. See, e.g., Corporacon Venezolana de Fomento v. Vintero Sales Corp., 629 F. 2d 786, 791 (2d Cir. 1980) (Congress did not intend for the FSIA to confer subject matter jurisdiction retroactively); Amoco Overseas Oil Co. v. Compagnie Nationale Algerienne, 605 F.2d 648, 654 (2d Cir. 1979) (It was not the "manifest intention of the legislative" to apply the FSIA retroactively. To do moreover, would prejudice very substantial antecedent rights of the parties). Cf. Ohntrup v. Firearms Center Inc., 516 F. Supp. 1281, 1283-84 (E.D. Pa. 1981), aff'd, 760 F.2d 259 (3d Cir. 1985) (While nothing that the substantive immunity principles set forth in the FSIA have been given retroactive effect, the court declined to give the provisions governing subject matter jurisdiction retroactive effect); Yessenin-Volpin v. Novosti Press Agency, 443 F. Supp. 849, 851 n.1 (S.D.N.Y. 1978) (Based on its findings that the FSIA does not create new rights of immunity but merely codifies the restrictive principle of sovereign immunity, the court concluded that applying the substantive provisions of the FSIA to an action commenced before its effective date would not interfere with the antecedent rights of the parties). The Court notes that in all the above-cited cases, the underlying events or transaction occurred and the cause of action accrued after 1952.

Finally, to apply the FSIA to the underlying transactions would clearly prejudice the antecedent rights of Mexico.18/

18/ The Court notes that the FSIA was not enacted until 24 years after the restrictive theory was adopted in 1952. Thus, there was no reason for Congress to consider the question of retroactivity since presumably causes of action more than 24 years old would be barred by the statute of limitations. See Schmidt v. Polish People's Republic, 742 F.2d 67 (2d Cir. 1948). In Schmidt, the court dismissed as time barred an action to recover on defaulted treasury notes issued by the Republic of Poland in 1929 and 1930. The court rejected plaintiff's arguement that the FSIA revived all claims existing against foreign governments before the FISA's passage. While nothing that the Act enhanced a party's capacity to obtain personal jurisdiction over a sovereign state, the court found that

> nothing in its language or legislative history indicates that such wholesale reactivation of ancient claims was intended. Moreover, since the "Tate Letter" of 1952, . . . foreign sovereign immunity had not extended to the commercial activity of a foreign state, such as is involved here, . . . and Congress had no reason whatsoever to believe that it was

event of such a default.19/ The Court finds that because Mexico may have reasonably relied on these factors in structuring its conduct prior to 1952, it would be inequitable to divest Mexico of the absolute immunity it enjoyed in 1922 by applying the FSIA to this case.

18/ (Continued) reviving otherwise dormant claims based on such activity. 742 F.2d at 71 (citations omitted). 19/ The formation of the Committee, the lengthy and repeated negotiations undertaken by that Committee with the Mexican government, and the numerous agreements under which Mexico agreed to repay the debts bolster this finding.

See Insurance Company of North America v. Marina Salina Cruz, 649 F.2d 1266,1272(9th Cir. 1981) (In actions arising undr the FSIA, it must be determined "whether that Act gives such clear notice to foreign countries as to remove, as a reasonableness factor, the expectations of immunity of agencies of foreign countries performing commercial functions.").20/

20/ In its statement of interest filed in Jackson, supra, the United States argued that the FSIA should not be applied retroactively to transactions predating 1952 since to do so would upset the settled expectations of foreign states. See also, Berizzi Brothers Co. v. S.S. Pesaro, 271 U.S. 562 571-73 (1926); The Schooner Exchange v. McFadden, 11 U.S. (7 Cranch) 116 (1812).

In conclusion, the Court finds that on the basis of the statutory language and the legislative history of the FSIA as well as the case law and the "Statement of Interest" filed by the Executive Branch in Jackson, supra,21/ the FSIA should not be applied retroactively to commercial activities or transactions of a foreign sovereign occurring before 1952.

Accordingly, it is this 8th day of July, 1985 ORDERED that defendant's motion to dismiss be and it hereby is granted; and it is further ORDERED that this action be and it is hereby dismissed.

SIGNATURE
Harold H. Greene
United States District Judge

21/ Attached to defendant's motion to dis judgement.

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Edwin Slade,
Appelllant,
v.
United States of Mexico
FILED July 24 1985
George A. Fisher
Clerk
BEFORE: Robinson, Chief Judge; Ginsburg, Circuit Judge; and Re, Chief Judge, United States Court of International Trade

ORDER

Upon consideration of appellant's motion for reconsideration, it is ORDERED, by the Court, that the motion be denied.

Per Curiam
BY THE COURT: GEORGE A. FISHER, CLER
BY: (SIGNATURE)Robert A. Bonner
Chief Deputy Clerk

CERTIFICATE OF SERVICE

I, Edwin Slade the undersigned, do hereby certify that a true and correct copy of the foregoing Petition for Writ of Certiorari was mailed this day, prepaid postage affixed, in the United States Mail in Las Vegas to counsel for Respondent at the address shown below:

Adlai S. Hardin, Jr.
Milbank, Tweed, Hadley, and McCloy
1 Chase Manhattan Plaza
New York N.Y. 10005

Dated October 20, 1986

Edwin Slade

Edwin Slade

Supreme Court, U.S.
FILED
NOV 26 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-710

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

EDWIN SLADE,

Petitioner,

v.

THE UNITED STATES OF MEXICO,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

RESPONDENT'S BRIEF IN OPPOSITION

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Counsel for Respondent

QUESTION PRESENTED

Does the Foreign Sovereign Immunities Act of 1976 apply retroactively to confer subject matter jurisdiction over the United States of Mexico with respect to actions transacted between 1922 and 1951?

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No. 86-710

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

EDWIN SLADE,

Petitioner,

v.

THE UNITED STATES OF MEXICO,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

RESPONDENT'S BRIEF IN OPPOSITION

Respondent the United States of Mexico, defendant below, respectfully requests that this Court deny the petition for writ of certiorari seeking review of the decision in this case by the Court of Appeals for the District of Columbia.

OPINIONS BELOW

The opinion of the District Court granting defendant's motion for summary judgment is reported at 617 F. Supp. 351 (D.D.C. 1985). The Court of Appeals affirmed on the opinion below, 790 F. 2d 163 (D.C. Cir. 1986). Because the District Court opinion is not accurately reproduced at pages 11-47 of the Petition, citations in this brief will be to the published opinion of the District Court at 617 F. Supp. 351.

STATEMENT OF THE CASE

The material facts are set forth in the opinion of the District Court, 617 F. Supp. at 351-55, based on affidavits and documents submitted in support of the motion for summary judgment, and have not been contested by petitioner (*see* 617 F. Supp. at 354, footnote 9). The facts may be briefly summarized.

Petitioner brought this action to recover the face amount of certain "Receipts for Interest in Arrears" which he claims (erroneously) were issued by respondent pursuant to agreements made in 1922. The history of these "receipts" is traceable to the period from 1886 to 1910, when the Mexican government, certain municipalities and privately owned railroads issued bonds which were sold worldwide. In 1914 payments on all of these bonds were suspended as a result of civil unrest in Mexico. Subsequently, a voluntary committee of international bankers (the "Committee") was organized for the purpose of negotiating resumption of payment of the bonds (617 F. Supp. at 351-52).

The Committee and Mexico ultimately reached an agreement in 1922 which included a waiver of interest and arrears of interest due the bondholders as of January 2, 1923. The 1922 agreement also included a plan under which the government of Mexico would pay to the Committee sums sufficient to retire such unpaid interest by 1968, and a provision under which holders of coupons for unpaid interest on the bonds could deposit the coupons with the Committee and, pursuant to a separate agreement with consenting bondholders, the Committee would issue "Receipts for Interest in Arrears". In the event that Mexico was unable to make sufficient payments to the Committee under the 1922 agreement (as amended in 1925), the depositors could recover their interest coupons from the Committee and resume their contractual rights against the original public and private issuers of the bonds (617 F. Supp. at 352-53).

The Committee received more than $45 million from Mexico pursuant to the 1922 plan and 1925 modification.

However, in 1928 Mexico again suspended payments to the Committee because of social and economic conditions in that country. In 1942 and 1946 the Committee negotiated agreements with Mexico under which holders of "Receipts for Interest in Arrears" could receive payments, at less than face value, directly fom Mexico (617 F. Supp. at 353).

The District Court noted that, in actions commenced in 1932 and 1952, the New York state courts made the following findings of fact and conclusions of law: (i) the Committee was not an agent of Mexico, (ii) the government of Mexico was not a party to the separate agreement made in 1922 between the Committee and bondholders pursuant to which the "Receipts for Interest in Arrears" were issued, (iii) the coupons deposited with the Committee in exchange for the receipts had no substantial monetary value, (iv) the Committee was authorized to destroy the coupons after publication of appropriate notice, and (v) the Committee was thereupon discharged of any further obligation to the receiptholders or bondholders (617 F. Supp. at 354). The District Court concluded that:

> Based on the foregoing facts, [footnote omitted] it is clear that, as a matter of substantive contract law, plaintiff cannot recover money due on receipts for interest arrears issued under the 1922 Deposit Agreement. However, Mexico has not moved to dismiss or for summary judgment on this ground. Rather, it argues that this Court lacks jurisdiction over it under the doctrine of sovereign immunity (617 F. Supp. at 354-55).

The District Court granted Mexico's summary judgment motion on the ground that the Foreign Sovereign Immunities Act ("FSIA") could not be applied retroactively to confer subject matter jurisdiction over Mexico.* After noting that the

---

* Respondent also argued below that dismissal was required because (i) Mexico's acts in negotiating the 1922, 1925, 1942 and 1946 agreements with the Committee did not constitute "commercial activity" under the FSIA, and (ii) the requisite "minimum contracts" are not present to support jurisdiction in the United States. The District Court did not reach these issues.

FSIA "provides the sole basis for subject matter jurisdiction over suits against foreign states [citations omitted]" (617 F. Supp. at 355), the Court observed that retroactive application of statutes is disfavored (617 F. Supp. at 356), and that prior to 1952 "the United States recognized and adhered to the theory of absolute sovereign immunity" (617 F. Supp. at 357).

Because the District Court found no support for retroactive application in the statutory language and legislative history of the FSIA, and because applying the FSIA to the underlying transactions would prejudice the antecedent rights of Mexico, the District Court held that

> Retroactive application of the Act would repudiate the immunity of foreign sovereigns for transactions predating 1952 and thus be inconsistent with Congress' intent not to affect the substantive law of liability.

(617 F. Supp. at 357) and that it would be "inequitable to divest Mexico of the absolute immunity it enjoyed in 1922 by applying the FSIA to this case" (617 F. Supp. at 358).

REASONS FOR DENIAL OF THE WRIT

I

THE QUESTION PETITIONER SEEKS TO RAISE IS PLAINLY WITHOUT MERIT BECAUSE MEXICO WAS ABSOLUTELY IMMUNE FROM SUIT IN THE UNITED STATES PRIOR TO THE PASSAGE OF THE FOREIGN SOVEREIGN IMMUNITIES ACT OF 1976

The doctrine of foreign sovereign immunity provides that no state may claim jurisdiction over another. Under the traditional theory, a foreign sovereign's immunity from suit was absolute unless the sovereign consented to suit. 6 Whiteman, *Digest of International Law*, § 20 at 553 (1968); Note, *Sovereign Immunity*, 18 Harv. Int'l L.J. 429 (1977); *Lamont v. Travelers Insurance Co.*, 281 N.Y. 362, 369, 24 N.E.2d 81, 82 (1939). The United States first adopted this traditional rule in

the 19th century in *The Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116 (1812). Although *The Schooner Exchange* concerned the seizure of a military vessel, the principle of absolute immunity was later extended to all acts, including commercial acts, of a foreign state. *Berizzi Bros. Co. v. S.S. Pesaro*, 271 U.S. 562 (1926).

It was not until 1952 that the "restrictive" theory of sovereign immunity—which postulates that a foreign sovereign may engage in various forms of conduct that are not within its governmental functions and, consequently, are not deserving of immunity—was formally adopted by the Executive Branch with the issuance of the "Tate Letter". 26 Department of State Bulletin, 678 (1952), *reprinted in Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682, 711-15 (1976).

The Tate Letter provided little guidance for the application of its "governmental/private act" dichotomy, however. Consequently, courts applied a variety of tests to determine the immunity question. *See, e.g., Et Ve Balik Kurumu v. B.N.S. Int's Sales Corp.*, 25 Misc. 2d 299, 303, 204 N.Y.S.2d 971, 977 (Sup. Ct. 1960), *aff'd*, 17 A.D.2d 927, 233 N.Y.S.2d 1013 (1st Dep't 1962); *In re Investigation of World Arrangements, Etc.*, 13 F.R.D. 280, 290-91 (D.D.C. 1952). But even after the advent of the "restrictive" theory in 1952, the courts continued to regard the issuance of public debt as a governmental function and therefore subject to the rule of immunity. *See, e.g., National City Bank v. Republic of China*, 348 U.S. 356 (1955); *Victory Transport Inc. v. Comisaria General de Abastecimientos y Transportes*, 336 F.2d 354 (2d Cir. 1964), *cert. denied*, 381 U.S. 934 (1965).

It was only through the enactment of the FSIA in 1976 that Congress altered the law and for the first time characterized the issuance of public debt as a commercial activity. Congress rejected the traditional approach, and decided that the issuance of public debt for foreign sovereigns should be treated as a commercial transaction, not subject to the doctrine of sovereign

immunity. *See* Delaume, *Public Debt and Sovereign Immunity: The Foreign Sovereign Immunities Act of 1976*, 71 Am.J.Int'l L. 399, 405 (July 1977); von Mehren, *The Foreign Sovereign Immunities Act of 1976*, 17 Colum. J. Trans. L. 33, 49 (1978) n.69.

Petitioner relies on *Chisholm v. Georgia*, 2 Dall. 419 (U.S. 1793) for the proposition that a foreign sovereign may be sued by a citizen (Petition at 6). *Chisholm*, however, decided the issue of state sovereign immunity rather than the issue of foreign sovereign immunity. Moreover, in *Edelman v. Jordan*, 415 U.S. 651, 662 (1974), this Court recalled that the *Chisholm* decision "literally shocked the Nation. Sentiment for passage of a constitutional amendment to override the decision rapidly gained momentum, and five years after *Chisholm* the Eleventh Amendment was officially announced by President John Adams." The Eleventh Amendment overruled *Chisholm*, "but this Court has recognized that its greater significance lies in its affirmation that the fundamental principle of soverign immunity limits the grant of judicial authority in Article III". *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 98 (1984).

The principle of sovereign immunity is reiterated in the other case cited by petitioner, *Lamont v. Travelers Insurance Co.*, 281 N.Y. 362, 363, 24 N.E.2d 81, 82 (1939) (Petition at 4), which stated that "[t]he Government of Mexico is, of course, immune from suit here." Recovery for repudiation of a contract or for injury inflicted without any justification by a foreign sovereign could not be granted by the courts without the consent of that sovereign (*Id.* at 84). This doctrine was not changed until the passage of the FSIA in 1976.

Thus, there can be no question that under the common law doctrine of sovereign immunity as it existed prior to 1976, respondent is absolutely immune from suit in any court in the United States based on the claim asserted by petitioner in this action. Even under the "restrictive" theory of sovereign immunity announced by the State Department in 1952, and even if petitioner's "receipts" constituted public debt obliga-

tions of the Mexican Government (which they do not), this action would be barred because prior to the FSIA the courts held that public loans constituted a governmental activity to which immunity would continue to attach.

II

THE DECISION BELOW, WHICH CORRECTLY DECLINED RETROACTIVE APPLICATION OF THE FOREIGN SOVEREIGN IMMUNITIES ACT OF 1976, NEITHER CONFLICTS WITH THE DECISIONS OF OTHER FEDERAL COURTS NOR PRESENTS AN UNSETTLED ISSUE OF LAW THAT THIS COURT SHOULD RESOLVE

The decisions of the District Court and the Court of Appeals rejecting retroactive application of the FSIA provisions governing subject matter jurisdiction are in accord with the other federal courts that have considered the issue. *Corporacion Venezolana de Fomento v. Vintero Sales Corp.*, 477 F. Supp. 615 (S.D.N.Y. 1979), *aff'd in part and rev'd in part*, 629 F.2d 786, 791 (2d Cir. 1980), *cert. denied*, 449 U.S. 1080 (1981); *Jackson v. The People's Republic of China*, 596 F. Supp. 386 (N.D. Ala. 1984), *aff'd*, 794 F.2d 1490 (11th Cir. 1986). The FISA has never been used by any court to confer subject matter jurisdiction over pre-1952 transactions. Thus, there is no split in authority for this Court to resolve, and no need for this Court to address the issue.

For more than a century, the United States granted foreign nations absolute immunity from suit in the nation's courts (*Jackson*, *supra*, at 1492). This doctrine was not questioned until the Executive Branch adopted a more "restrictive" theory of sovereign immunity in 1952. The United States should not, by a change in its domestic law, retroactively abrogate the internationally accepted principle of sovereign immunity.

In short, there is no reason for this Court to grant the petition for certiorari in this case. Petitioner's claim against respondent is patently defective and subject to summary dismissal on at least four separate grounds. The decisions of the courts below in this action are consistent with all of the cases

which have considered the issue, and there is no authority in support of petitioner's contention. And finally, the opinion of the District Court in rejecting retroactive application of the FSIA reflects the policy of the United States Government as set forth in the "Statement of Interest" signed by attorneys of the Department of State and the Department of Justice and filed in *Jackson v. The People's Republic of China, supra.*

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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November 26, 1986

(3)

Supreme Court, U.S.
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CLERK

No. 86-710

IN THE SUPREME COURT OF THE UNITED STATES

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Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

The petitioner Edwin Slade, unschooled in law, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia filed on May 27, 1986.

OPINION BELOW

The U.S. District Court for the District of Columbia found the defendant wholly immune from suit. This is reversible error, for since the doctrine announced by Chief Justice Marshall in the Schooner Exchange v. McFadden 11 U.S. (7 Cranch) 116 (1812) case, any immunity extended to a nation was merely a matter of grace which could be changed at the pleasure of the United States, and respondent should have been on notice that it could not rely on sovereign immunity as a right owed to it by the United States for a commercial act.

Furthermore, the defense of sovereign immunity against a jurisdictional issue is an affirmative defense which must be proven by respondent. As such, at the time of the original bond issue in the United States, respondent should have submitted a petition requesting immunity to the State Department. No evidence of such a

petition was introduced in this case; nor could it have ever been granted, because of the commercial nature of the transaction in question. The lower court should have found that respondent has not proven, nor does enjoy, sovereign immunity in this case.

The lower court erred in its ruling protecting Mexico's antecedent rights, for it should have found Mexico had no antecedent rights prior to the enactment of the FSIA, and there were none to protect. Furthermore, the lower court did not rule on petitioner's suit to sue Mexico for a guaranteed debt existing in 1980, with the prospect of satisfying that debt with monies earned by Mexico in the United States after 1980.

The FSIA adds no new law, but only codifies existing law.

On the other hand, petitioner has the right to sue a foreign sovereign by virtue of Article III Section 2 of the

U.S. Constitution.

CLARIFICATION OF STATEMENT OF THE CASE

This case is the result of an original bonded dollar debt issued in the United States and defaulted on by a foreign sovereign. In various attempts to cure the default, subsequent agreements were entered into by Mexico. It is important to note that the terms of every subsequent agreement provided that if said agreement was not carried out, the original rights of the bondholder would be reinstated.

Petitioner maintains that these rights include all of the sovereign guarantees enumerated in the original bonds, further re-iterated by a sovereign promise that they would be revived. This is the position that the New York State Supreme Court held in Lamont v. Travelers Ins. Co. 281 N.Y. 362, 24 N.E.2d 81(1939), when it ruled that a default of a

subsequent agreement did not relieve Mexico of the obligation to pay the debt.

A sovereign cannot declare bankruptcy to avoid its just debts, for it is always sustained by its taxation revenue.

Since part of the guarantee included revenue from the Texas-Mexican Railroad located in the United States of America, this suit was brought envisaging the prospective application of the FSIA, a remedy available to petitioner at the commencement of his suit in 1980.

DEFENDANT'S ARGUMENT IS ERRONEOUS

Petitioner alerts the court that respondent argues to a different "Question Presented" than that raised by the petitioner. Petitioner has adequate answers to respondent's brief, even though respondent's brief is not salient. Respondent only considers the question of immunity between 1922 and 1951, and even if he prevails, does not defeat

petitioner's assertion of jurisdiction in 1980.

Respondent erroneously asserts that "The FISA has never been used by any court to confer subject matter jurisdiction over pre-1952 transactions." (Respondent's Brief in Opposition p.7) In the opinion written by then Circuit Judge Scalia in the case of Asociacion de Reclamantes v. The United Mexican States, 735 Fed 2d 1517 (1984) p.1520, the D.C. Circuit Court was given subject matter jurisdiction over events taking place in pre-1952 transactions (e.g.1941). In that case, Mexico benefitted from retroactive application of the FSIA. It is inconsistent and illogical for the same defendant to now argue the reverse, and claim the FSIA is not retroactive and would take away its antecedant rights of sovereign immunity (when it has none). A foreign sovereign, by all norms of international law, has the duty to honor its sovereign promise underlying the

redemption of its bonds, in order to maintain respect for contractual undertakings (von Mehren, International Arbitrations Between States and Foreign Private Parties: 7 Am.J.Int'l.L. p.514 July 1981).

Petitioner notes that the decision in Chisholm v. Georgia, 2 U.S. (2 Dallas) never abrogated the right of a U.S. citizen to sue a foreign sovereign.

Respondent cites Berizzi Brothers Co. v. S.S. Pesaro, 271 U.S. 562, 70 L.Ed. 1088, 46 S.Ct. 611 (1926) without noting that this case stands for the proposition that Congress should avoid "sudden changes" in the immunity of foreign states without prior adequate notice. This decision was rendered after the debt certificates, which are the subject of this case, were issued.

Indeed, the case of Schmidt v. Polish People's Republic, 742 F.2d 67 (CA2 1984) found that "FSIA gives the Court

jurisdiction over any non-jury civil action against a foreign state as long as the defendant is not entitled to sovereign immunity." This case involved transactions dating back to 1937.

The courts have ruled on foreign sovereign debts being of commercial character, which deprives the sovereign of immunity in this country. See Sugarman v. Aero Mexico Inc. 626 F.2d 270 and Behring International v. Imperial Iranian Air Force, 475 F. Supp. 383.

Respondent quotes the "doctrine of foreign sovereign immunity" (Respondent's Brief in Opposition p.4) without giving a citation as to its source, which in fact does not exist as a written body of law. In Mexico v. Hoffman, 324 U.S. 30, 89 L.Ed. 729, 65 S.Ct. 530 (1945) the Supreme Court made it clear that there was no doctrine of absolute sovereign immunity in the United States on which

foreign sovereigns could rely.

Finally, respondent cites Jackson v. Peoples Republic of China to defeat Slade v. United States of Mexico, and the Eleventh Circuit Court of Appeals cites Slade to defeat Jackson. It is respectfully noted that both Slade and Jackson are before the October Term of this court seeking writs of certiorari.

REASONS FOR ALLOWING WRIT

It is the duty of the Supreme Court to oversee the administration of justice below and make such rulings and fashion such remedies by virtue of 28 USCA 1651 that are just.

Petitioner argues that respondent, by introducing a guaranteed debt instrument in this country subject to the laws of the United States, and not redeeming same, is acting unjustly.

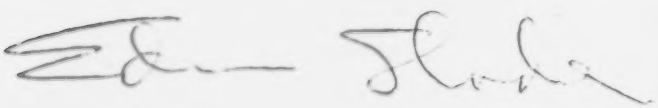
The lower court, misdirected by specious arguments of respondent (which wholly

inures to the benefit of the debtor), ruled that Mexico was wholly immune from suit which is unjust to petitioner, in that it violates rights guaranteed under Article III, Sec. 2 of the U.S. Constitution.

CONCLUSION

For all the foregoing reasons, petitioner Edwin Slade respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia in the above captioned case.

Respectfully submitted,



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January 1, 1987